



# Site Visit Report

Coos County March 13  
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## ABSTRACT

Documentation of contacts with Criminal and Juvenile Justice service providers and recommendations on the issue of appointment of counsel for clients who qualify for state-funded representation

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## Introduction

Coos County is a jurisdiction on the smaller end of population size in Oregon. The Court consists of four judicial officers, though at the time of this site visit one of the judicial positions was vacant and awaiting appointment by the Governor. The district attorney's office for Coos County is funded for seven attorney positions, including the elected DA, though at the time of the site visit there were three attorney positions with vacancies. The Coos County Jail contains approximately 200 beds, but at the time of the site visit staffing levels were such that the jail could only operate approximately 50 of those beds.

Public Defense work in Coos County is handled primarily by two entities: Southwestern Oregon Public Defense Services (SWOPDS), and Coos County Juvenile Consortium (the Consortium). Prior to July 2022, a third entity – Coos County Criminal Consortium – also provided Public Defense services, but opted not to contract with the Office of Public Defense Services in the current contract cycle.

SWOPDS is a non-profit firm that, as of the time of this report, employed eight full-time attorneys and one attorney with a mixed workload of criminal and training responsibilities. SWOPDS is contracted to perform 6.5 MAC of criminal representation and 1.0 MAC of juvenile representation under the PCRCP model.

The Consortium is an association of four attorneys providing 2.8 MAC of juvenile representation under the PCRCP model.

The remainder of criminal and juvenile representation in Coos County is handled by attorneys assigned on an hourly basis by OPDS for public defense or under private retainer.

Coos County was identified as having a need for a site visit because, despite its smaller population size, the county consistently had cases on the Unrepresented List.

## Preparation for Site Visit

To prepare for the Coos County site visit, OPDS staff identified four employees to handle the site visit: the Trial Division Deputy and the Program Analyst in charge of the county, a The Legislative and Provider Liaison, and the Executive Director.

In preliminary discussions surrounding the planned site visit, it was decided that the site visit would consist of a preliminary written survey, individual stakeholder meetings, and a final stakeholder conference including as many stakeholders as we could get to attend. The survey was sent to public defense providers ahead of the site visit with questions to assist in understanding the issues relevant to local practice, as well as to give members of the provider community who would not be able to meet in person the opportunity to provide feedback. The list of providers who were sent the survey included all attorneys at SWOPDS and the Consortium as well

as attorneys who had recently accepted assignment of cases in Coos County on an hourly basis.

Court staff, including the Presiding Judge and Trial Court Administrator, the District Attorney, and the leaders of SWOPDS and the Consortium were contacted to schedule meetings, as well as those attorneys local to Coos County who had recently taken cases on an hourly basis. All were also invited to the full stakeholder meeting at the end of the site visit.

## **Survey Responses**

Surveys were designed to identify whether the attorney's experience was in criminal practice, juvenile practice, or both, and to determine approximately the extent of that experience. Respondents were also asked to identify from which jurisdiction the bulk of their experience came and, if not from Coos County, their level of experience with Coos County specifically.

Respondents were asked which Coos County court practices facilitated and/or hindered the efficient appointment and effective practice of criminal and juvenile law. Respondents were also asked the same question about District Attorney practices and public defense practices. Respondents were asked what made Coos County courts unique, and what the biggest barriers were to criminal and juvenile practice in Coos County. Finally, respondents were asked what the Court, District Attorney, or OPDS could do to help improve practice in Coos County.

In total there were six respondents to the survey. Years of experience overall ranged from just over a year to fourteen years of criminal practice experience. Of note, five of the six respondents reported either less than two years experience or more than ten years experience, indicating a potential gap in attorneys in the mid-level experience range. Only one respondent indicated juvenile practice experience.

With regards to Coos County Court practices, several themes were consistent among responses:

- Respondents with practice experience outside of Coos County indicated that the practice culture in the courtroom is a little less formal than would be found elsewhere, and that court staff were generally welcoming, thoughtful, and communicative.
- Respondents felt that the Court practice of refusing to accept plea negotiations after setting trial – absent extraordinary circumstances – was a significant barrier to effective practice.
- Respondents indicated that omnibus hearings are held substantially prior to trial. However, the results of those hearings are not generally considered sufficient to reopen plea negotiations.
- Respondents felt that the Court practice of setting change of plea shortly after arraignment, regular denial of requests for additional time for investigation and negotiation, and then quick sets of trial (colloquially known as the “Rocket Docket”) was a significant barrier to effective practice and contributed heavily

to feelings of attorney burnout. Out-of-county respondents indicated leniency with this practice.

- Respondents indicated that they were met with significant resistance from the court when requesting remote appearances that, when combined with frequent procedural appearances, led to inefficient use of attorney time significant collateral costs for clients.
- Respondents indicated that the Court continued to use paper filing systems, leading to delays.

With regards to Coos County District Attorney practices, the following themes were observed:

- Respondents were mixed in their views of plea offers. Some noted occasional early plea offers, but the majority indicated that there was difficulty getting responses to requests for offers until just before a decision was required by the client. There were likewise differing views on the relative severity of the plea offers.
- Respondents noted an over-emphasis on prosecution of Driving While Suspended cases.
- Respondents indicated that the District Attorney had a blanket policy of objecting to Civil Compromises.
- Respondents indicated that discovery was a difficult process, and that multiple requests would need to be made for routine discovery such as body cam video and grand jury recordings. Discovery for out-of-county counsel is provided by mail, which increases timelines if there are issues with the discovery that is received.

With regards to Public Defense practices, the following themes were observed:

- Public defenders in Coos County are resilient, competent, and eager despite observably heavy caseloads.
- SWOPDS has outdated data and information management systems. All discovery for criminal cases is managed in physical files, though this is in part due to all discovery from the DA's office being provided in physical format. There is infrastructure to manage digital files, as discovery for dependency cases is provided in a digital format.
- Compensation for Public Defenders is uncompetitive.

Respondents indicated the following as the biggest barriers to practice in Coos County:

- Heavy workloads.
- Public defenders being treated by the courts as if their word is unreliable.
- Discovery delays pushing up against plea deadlines without meaningful opportunity to request continuances.

Respondents suggested the following improvements to practice in Coos County:

- The Court and DA agreeing to civil compromises.
- The Court could break up dockets so that attorneys and clients are not waiting in court for their case to be called.
- The Court could allow flexibility in requests for set-overs and continuances
- OPDS could improve the expense authorization process to account for the remoteness of Coos County.
- The District Attorney could routinely include digital discovery instead of waiting for the defense attorney to request it, and the Court could hold the District Attorney accountable for failures to produce discovery.
- The Court could provide space in the courthouse for private consultation with clients.
- The District Attorney could be more responsive to plea negotiations.
- OPDS could work with the Bar to address the attorney shortage.

## Individual Stakeholder Meetings

OPDS met with providers one on one and in small groups to learn more about their experiences as public defense providers in Coos Co. Some of the take aways were:

General:

- Criminal and Juvenile Justice Stakeholders do not have regular meetings to talk with other system partners about systemic issues.
- The legal community is very small. There are not enough lawyers in any practice area, including public defense and prosecution, and there is only one investigator in Coos County available to help with cases handled by attorneys outside of SWOPDS.
- Coos County lacks affordable housing. There are no long term rentals, and multiple lawyers reported lease lengths of one to three months. There are not enough homes, and the existing inventory is expensive. Many professionals reported housing insecurity upon moving to Coos County.
- Coos County Courthouse is located in Coquille. Most clients and service providers/stakeholders are located in Coos Bay and North Bend, which is a 20-30 minute drive from the courthouse. Coos County's infrastructure has limited public transit options, and reports were that there was only a single bus line to the courthouse and it only had a single dropoff at the courthouse in the morning, with the return trip only being in the evening.
- Coos County Court still handles most filings in paper format, leading to delays while court staff and attorneys process the paper

Juvenile Justice:

- The court has returned in person court appearances, but at the same time there are significant practical barriers faced by clients to personal appearance for largely non-substantive hearings: (travel, childcare, employment)

- The PCRCP model works well
- The Department of Human Services provides digital discovery on juvenile cases.

#### Criminal Justice:

- Barriers to recruiting new public defenders include:
  - Low pay
  - A feeling of being devalued members of the criminal justice system
  - Overwhelming caseloads
  - Inflexibility on case timelines,
  - Perception that the court does not trust attorney schedule conflicts
  - The “rocket docket”
- Lack of support from district attorney to divert people from convictions and incarceration, such as, no civil compromises, no / limited treatment court
- While the district attorney’s office is funded for 7 lawyers, it is currently staffed with 3 lawyers and one certified law student and does not have funding or staffing for a discovery clerk. This understaffing in the district attorneys office has negative impacts for stakeholders including:
  - delayed filing of cases
  - backlog of uncharged conduct, sometimes leading to:
    - A client being immediately charged with a new crime after a plea is reached on a previous charge
    - Plea deals including global resolution of uncharged conduct for which counsel is never appointed but must spend time working
  - inconsistent discovery availability and delivery
  - inability to negotiate effectively
- Discovery from the District Attorney’s office is largely provided in physical format. While the District Attorney receives police reports from some agencies in digital format, other agencies only provide paper or facsimile copies of reports. Other digital discovery is generally only provided on physical media, and the District Attorney is not sufficiently funded to store digital discovery in a database or other method that could be accessed by defense counsel digitally.
- The District Attorney maintains an “open file” discovery practice, allowing defense counsel to come into the office to view and copy any case file.
  - For local counsel this is the *only* method of discovery, requiring counsel or a clerk from defense counsel’s office to repeatedly check for new discovery on each case instead of new discovery being automatically provided to the defense.
  - For counsel from out of county, the District Attorney’s office mails a physical copy of discovery to counsel, however there were reports that the physical media were sometimes inaccessible leading to further delays in negotiations and preparations.

- The district attorney noted many of the same barriers to recruiting new hires as faced by the public defender including relatively low pay (as compared with other district attorney offices across Oregon), decreased law school admissions, and a reluctance to live in rural communities. The district attorney indicated that he had several open job postings for which he was not receiving any applicants.
- Pre-trial motions are typically heard 1-2 weeks before trial, however the results of pre-trial motions are not generally considered sufficient reason to allow negotiations to resume

#### Jail:

- The jail was built to hold more than 100 adults in custody, however, it is currently operated as a 50 bed facility due to understaffing.
- Court practice is to not grant credit for time served pretrial, as once sentencing occurs the jail is far more likely to release a client before their sentence is complete to open up beds for pre-trial holds
- Jail access:
  - Understaffing at the jail causes the jail to shut down professional visits. Providers reported that the jail shut down professional visits three times during the week of OPDS visit.
  - There are four visiting rooms for professional visits and they cannot be reserved in advance.
  - There is no video conferencing with clients at the jail, however, it is possible to place a confidential phone call to adults in custody at the jail.

#### OPDS:

- Working under a contract is preferable to hourly because hourly had higher transaction costs and greater uncertainty.
- OPDS rejecting monthly billing invoices is a deterrent to providing public defense representation.
- OPDS should provide more notice to the community when a provider is switching from one practice area to another as this can have a significant impact in a small legal community.
- Because of how cases are charged and resolved (with uncharged conduct becoming a part of the negotiations without formal appointment) the criminal defense attorneys feel that they are not getting enough credit for cases

#### SWOPDS:

- The Public Defenders office needs resources to modernize antiquated systems including:
  - An access database cannot be used for correspondence;
  - Reliance on paper files;

- Investigators submitting hand written reports
- The Public Defender's office is located in Coos Bay which makes it convenient for clients to meet with their lawyers as most clients live in North Bend and Coos Bay. Additionally, Coos Bay has a nice downtown business area with a selection of good dining options. However, the Courthouse and the jail are located in Coquille, which is a 20 – 30 minute drive from the Public Defender's office. Public Defenders spend significant time driving between the two locations due to an underutilization of technology – paper discovery must be photocopied by the public defender at the DAs office in the courthouse, court appearances are in person for local providers, there is no confidential remote access to clients at the jail.

## Resolutions

At the conclusion of the site visit, OPDS gathered multiple stakeholders into a larger group meeting to discuss the trends we were hearing from individual stakeholders. Many stakeholders discussed their concerns together, and three primary resolutions were discussed and accepted by those present:

1. The court expressed a commitment to loosening the timelines associated with the “rocket docket,” and to accepting additional reasons for granting additional time before entry of plea.
2. The court expressed a willingness to have remote appearances for non-local attorneys
3. The District Attorney indicated that there is some infrastructure to move towards digital discovery, but that his funding levels are too low to support fully-digital discovery at this time.
4. The Trial Court Administrator has technology to facilitate remote secure attorney visits for clients held in custody, and expressed a desire to work with stakeholders to ensure confidentiality and that staffing levels could support remote visits